IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN RITTER 1374 Gabriel Lane Warwick, PA 18974 Plaintiff, v. COWHEY FAMILY SUPERMARKET, L.P. 942 West Street Road Warminster, PA 18974 Defendant.	Civil Action No.:____________ **JURY TRIAL DEMANDED**

COMPLAINT – CIVIL ACTION

Plaintiff Susan Ritter ("Plaintiff"), by and through her undersigned attorneys, for her Complaint against Defendant Cowhey Family Supermarket, L.P. ("Defendant"), alleges as follows:

INTRODUCTION

1. Plaintiff brings this action to redress violations by Defendant of the Federal False Claims Act ("FCA"), 31 U.S.C. § 3701, *et seq.*, and the Pennsylvania Whistleblower Law ("Whistleblower Law"), 43 P.S. § 1421, *et seq.*

PARTIES

2. Plaintiff, Susan Ritter, is a citizen of the United States and Pennsylvania, and currently maintains a residence at 1374 Gabriel Lane, Warwick, PA 18974.

3. Defendant, Cowhey Family Supermarket, L.P., is a limited partnership registered to conduct business in the Commonwealth of Pennsylvania. Upon information and belief, Defendant conducts business at two separate locations: one at 942 West Street Road,

Warminster, PA 18974 ("Defendant's ShopRite Location") and one at 595 West State Street, Doylestown, PA 18901 ("Defendant's Doylestown Hospital Location").

4. At all times relevant hereto, Defendant acted or failed to act through its agents, servants, and/or employees thereto existing, each of whom acted at all times relevant hereto in the course and scope of their employment with and for Defendants.

JURISDICTION AND VENUE

5. Paragraphs 1 through 4 are hereby incorporated by reference as though the same were fully set forth at length herein.

6. This action is for violations by Defendant of Plaintiff's rights protected by the Federal False Claims Act ("FCA"), 31 U.S.C. § 3701, *et seq.*, and the Pennsylvania Whistleblower Law ("Whistleblower Law"), 43 P.S. § 1421, *et seq.*

7. This Court has original jurisdiction over Plaintiff's FCA claim pursuant to 28 U.S.C. § 1331, as it is an action arising under the laws of the United States.

8. This Court has supplemental jurisdiction over Plaintiff's state Whistleblower Law claims pursuant to 28 U.S.C. § 1367, as Plaintiff's Whistleblower Law claims form part of the same case and controversy as Plaintiff's federal law claims.

9. The venue in this district is proper under 28 U.S.C. § 1391(b), as the parties reside in this judicial district and the events giving rise to this action occurred in this judicial district.

FACTS RELEVANT TO ALL CLAIMS

10. Paragraphs 1 through 9 are hereby incorporated by reference as though the same were fully set forth at length herein.

11. In or around February of 2016, Plaintiff began working for Defendant as a part-time pharmacist.

12. Plaintiff was originally hired to work approximately twenty (20) hours per week at Defendant's Doylestown Hospital Location, however, Plaintiff was trained at both Defendant's Doylestown Hospital and ShopRite Locations and was ultimately placed permanently at Defendant's ShopRite Location.

13. Defendant is a limited partnership engaged in the business of dispensing medications to customers, per prescriptions written by physicians, including to customers covered by federally- and/or state-assisted insurance programs, wherein Defendant submits certain prescriptions to be covered by said federally- and/or state-assisted insurance programs and, in return, receives federal and/or state funds as reimbursement for the products dispensed and services performed in filling the prescriptions.

14. At all times relevant hereto, Plaintiff was an employee of Defendant and reported directly to Louis Amodei, the Pharmacist in Charge at Defendant's ShopRite Location ("Mr. Amodei").

15. At all times relevant hereto, Plaintiff performed her job well, receiving praise for her work and no discipline.

16. At all times relevant hereto, Plaintiff was fully qualified for her position with Defendant.

17. Pennsylvania Code states that "[a] pharmacist may not knowingly fill or refill a prescription for a controlled substance or nonproprietary drug or device if the pharmacist knows or has reason to know it is for use by a person other than the one for whom the prescription was written, or will be otherwise diverted, abused or misused." See 49 Pa. Code § 27.18(c).

18. Throughout the first several months of her employment with Defendant, Plaintiff became aware that Mr. Zeladonis, had, at least, an uncomfortably liberal, if not ethically and

legally prohibited, narcotic—i.e. controlled substance—dispensing practice. Plaintiff became aware of this issue through calling attention to the filling and refilling of certain customers' narcotic prescriptions. Notably, the response Plaintiff received at that time to her reported concerns was that "this is what [Defendant] has always done."

19. For example, Mr. Zeladonis would fill prescriptions for excessive quantities of narcotics, for excessive doses of narcotics, for duplications of narcotics within the same pharmaceutical class, and for premature refills, all without having appropriate opioid dispensing guidelines or standards of practice in place, including confirmation of a prescription's validity with the prescribing physicians.

20. Indeed, Plaintiff, on at least one occasion, reported a customer of Defendant to local police for submitting a forged prescription to be filled. During the course of the investigation, it became apparent that this customer had previously submitted forged prescriptions to Defendant that had been filled without properly certifying the validity of the customer's prescriptions.

21. Upon information and belief, Mr. Zeladonis's aforementioned practices present a very high risk that customers receiving narcotics pursuant to these practices will either divert, abuse, or misuse the same and that Mr. Zeladonis likely knew or had reason to know of the same.

22. Accordingly, Plaintiff raised her concerns regarding Mr. Zeladonis's narcotic dispensing practices with Mr. Amodei, who generally shared Plaintiff's concerns but stated that the customers in question had become accustomed to Mr. Zeladonis's practices regarding the dispensing of narcotics and that Defendant would be unlikely to correct the behavior.

23. Between her hire in or around February of 2016 and in or around August of 2016, Plaintiff further identified a number of Defendant's customers that were having the same

prescriptions for narcotic medications written by multiple doctors and having said prescriptions filled by multiple pharmacies (hereinafter referred to as "poly-physician, poly-pharmacy" practices).

24. A customer engaging in "poly-physician, poly-pharmacy" practices is assumed, within the pharmacist community, to be using the extra medication in an unlawful, or at least unauthorized, manner by diverting, abusing, or misusing the same.

25. Accordingly, "poly-physician, poly-pharmacy" practices must be closely monitored by a pharmacy, like Defendant, to ensure a customer is not receiving more medication than they should at any one time.

26. For example, one customer was having three separate strengths of the same narcotic medication filled by Defendant through prescriptions from more than one physician.

27. Indeed, according to 49 Pa. Code § 27.18(c), pharmacists are tasked with recognizing and eliminating, or at least not furthering, such practices.

28. Plaintiff expressed her concerns to Mr. Amodei and James Teeple, another of Defendant's pharmacists ("Mr. Teeple"), regarding Defendant's customers engaging in "poly-physician, poly-pharmacy" practices and the liability to which Defendant and individual pharmacists would be exposed should these practices continue, uncorrected and unmonitored.

29. As a result of the above concerns, Plaintiff, Mr. Amodei, and Mr. Teeple agreed in or around August of 2016 that they, individually, would no longer fill different strengths of the same medication.

30. Plaintiff's final complaint to Defendant regarding the above practices was to Mr. Amodei in or around mid-January of 2017. Based on Plaintiff's information, Mr. Amodei spoke to Ms. Costello about their collective concerns.

31. Mr. Amodei relayed to Plaintiff that Ms. Costello was still unreceptive to the aforementioned concerns and that Mr. Zeladonis's behavior was likely to continue without discipline or correction.

32. Shortly thereafter, on or about January 30, 2017, Plaintiff was wrongfully terminated from employment with Defendant.

33. Specifically, on or about January 30, 2017, Plaintiff was called into a meeting with Ms. Costello and Mr. Amodei.

34. At said meeting, Plaintiff was informed that she was being terminated because Defendant no longer had a need for a part-time pharmacist at either of their locations.

35. Upon information and belief, Defendant's stated reason for terminating Plaintiff was untrue and that Defendant had a continuing need for a part-time pharmacist.

36. Indeed, upon further information and belief, Defendant hired a new pharmacist to cover the necessary part-time hours at Defendant's Doylestown Hospital Location after Plaintiff's termination, even though Ms. Costello was very clear that Defendant did not have any issues with Plaintiff's job performance but that Plaintiff was being terminated solely because Defendant no longer had a need for a part-time pharmacist at either of their locations.

37. Accordingly, it is believed, and therefore averred, that Plaintiff was wrongfully terminated for clearly pretextual reasons.

FACTS RELEVANT ONLY TO FCA CLAIM

38. Paragraphs 1 through 37 are hereby incorporated by reference as though the same were fully set forth at length herein.

39. Upon information and belief, the aforementioned practices resulted, on multiple occasions, in new prescriptions and/or refills being submitted to federally- and/or state-assisted

insurance programs, such as Medicaid and/or Medicare, for reimbursement either prematurely or unnecessarily.

40. It is believed, and therefore averred, that Mr. Zeladonis submitted billing to these federally- and/or state-assisted insurance programs knowing, or having reason to know, that the prescriptions for which he sought reimbursement were fraudulent, duplicates, premature, and/or completely unnecessary.

41. Accordingly, by knowingly billing federally- and/or state-assisted insurance programs for fraudulent, duplicate, premature, and/or completely unnecessary prescriptions, Defendant was causing a false claim for federal funds to be submitted the government.

42. Plaintiff reported her concerns regarding the above to Defendant and was, shortly thereafter, terminated for a clearly pretextual reason.

43. It is believed, and therefore averred, that Plaintiff was wrongfully terminated in retaliation for her investigation into and reports of false claims submitted to federally- and/or state-assisted insurance programs in clear violation of the FCA. See 31 U.S.C. § 3730(h).

FACTS RELEVANT ONLY TO WHISTLEBLOWER LAW CLAIMS

44. Paragraphs 1 through 43 are hereby incorporated by reference as though the same were fully set forth at length herein.

45. During her employment with Defendant, Plaintiff discovered multiple unethical, and potentially illegal, narcotic dispensing practices of Mr. Zeladonis.

46. Plaintiff reported Mr. Zeladonis's practices to Mr. Amodei and Ms. Costello, however, Defendant did not take measures to correct the same.

47. Indeed, in her reports about Mr. Zeladonis's unethical, and potentially illegal, narcotic dispensing practices, Plaintiff indicated that his actions were not only potentially illegal

and not only exposed Defendant its pharmacists to liability, but that Mr. Zeladonis's actions were potentially harmful to the customers and the public as well.

48. The Whistleblower Law defines "wrongdoing" as "[a] violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer." See 43 P.S. § 1422. As such, the aforementioned actions by Mr. Zeladonis constitute wrongdoing as defined by the Whistleblower Law.

49. During her employment with Defendant, Plaintiff also discovered Mr. Zeladonis's unethical, and potentially illegal, narcotic dispensing practices resulted in false claims for reimbursement being submitted for customers receiving federally- and/or state-assisted insurance.

50. Plaintiff reported this issue to Mr. Amodei and Ms. Costello, however, Defendant did not take measures to correct the same.

51. The Whistleblower Law defines "waste" as "[a]n employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources" derived from public sources. See 43 P.S. § 1422. As such, the aforementioned actions by Mr. Zeladonis constitute waste as defined by the Whistleblower Law.

52. Plaintiff reported the aforementioned waste and/or wrongdoing to Defendant on multiple occasions, and last reported the same to Mr. Amodei, who, in turn, relayed Plaintiff's concerns to Ms. Costello, less than one (1) month prior to her termination on January 30, 2017, for clearly pretextual reasons.

53. Accordingly, prior to Plaintiff's termination, Defendant was on notice of Plaintiff's report to her employer, and/or reasonably aware of the potential of Plaintiff's

imminent report to the proper authorities, of the aforementioned wrongdoing.

54. Upon information and belief, Defendant wrongfully discharged Plaintiff for reporting to her employer, and/or believing Plaintiff was about to report to an appropriate authority, wrongdoing in violation of public policy.

55. The Commonwealth of Pennsylvania has a clear and important interest and policy in preventing the diversion, abuse, and/or misuse of narcotic medication, as indicated by, among other things, the restrictions imposed by 49 Pa. Code § 27.18(c).

56. Furthermore, the Commonwealth of Pennsylvania also has a clear and important interest and policy in preventing wrongdoing within a publicly-funded entity, as indicated by, among other things, the restrictions imposed by 43 P.S. §1423.

57. As such, the termination of an employee for reporting the aforementioned unethical and/or illegal practices is contrary to the public policy of Pennsylvania.

58. As a result of Defendant's deliberate, willful, malicious, and unlawful actions, Plaintiff has suffered damages, including but not limited to, loss of employment, promotion benefits, earnings and earnings potential, and other economic damages, and has also suffered mental anguish, emotional pain and suffering, emotional distress, humiliation, and damage to reputation.

COUNT I
FEDERAL FALSE CLAIMS ACT
31 U.S.C. § 3701, *et seq.*
RETALIATION

59. Paragraphs 1 through 58 are hereby incorporated by reference as though the same were fully set forth at length herein.

60. The FCA seeks, among other things, to stop "any person who . . . knowingly presents, or causes to be presented, a false or fraudulent claim for payment approval." See 31

U.S.C. § 3729(a)(1)(A).

61. Furthermore, the FCA states that "[a]ny employee . . . shall be entitled to all relief necessary to make that employee . . . whole, if that employee . . . is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee . . . in furtherance of an action under this section or other efforts to stop 1 or more violations of" the FCA. See 31 U.S.C. § 3730(h)(1).

62. As such, Plaintiff engaged in activity protected under the FCA when she investigated Mr. Zeladonis's narcotic dispensing practices that led to false claims for reimbursement being submitted to federally- and/or state-assisted insurance programs and reported her investigation and concerns surrounding the same to Mr. Amodei and Ms. Costello.

63. As a result of Plaintiff's protected activity, Mr. Amodei attempted to further investigate, report, and correct Mr. Zeladonis's improper dispensing practices, including his improper and potentially fraudulent billing.

64. Accordingly, Defendant was on notice that litigation under the FCA was likely imminent.

65. Plaintiff was terminated on January 30, 2017—shortly after her report to Mr. Amodei and his subsequent revelation to Ms. Costello regarding the various, informal, internal investigations and the resulting concerns.

66. Defendant's alleged reasons for terminating Plaintiff were clearly pretextual. It is believed, and therefore averred, that Plaintiff was terminated in retaliation for her exercise of protected activity under the FCA, of which Defendant was certainly aware.

67. As a result of Defendant's deliberate, unlawful, and malicious actions as set forth

above, Plaintiff has suffered loss of employment, promotion benefits, earnings and earnings potential, and loss of other significant economic benefits.

WHEREFORE, as a result of the unlawful conduct of Defendant, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant, and grant her the maximum relief allowed by law, including, but not limited to:

(A) Back wages and front pay in an amount to be determined at trial, but no less than One Hundred and Fifty Thousand Dollars ($150,000.00);

(B) Liquidated damages;

(C) Plaintiff's reasonable attorneys' fees and all costs of this action;

(D) Pre-judgment interest in an appropriate amount;

(E) Such other and further relief as is just and equitable under the circumstances; and

(F) Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth by applicable federal law.

COUNT II
PENNSYLVANIA WHISTLEBLOWER LAW
43 P.S. § 1421, *et seq.*
VIOLATION

68. Paragraphs 1 through 67 are hereby incorporated by reference as though the same were fully set forth at length herein.

69. The aforementioned actions of Defendant constitute a violation of the Pennsylvania Whistleblower Law ("Whistleblower Law"), 43 P.S. § 1421, *et seq.*, entitling Plaintiff to all appropriate damages and remedies available.

70. Defendant is an "employer" under the Whistleblower Law because it receives Commonwealth funding through payments from federally- and/or state-assisted insurance

programs for medicine dispensed at both Defendant's ShopRite and Doylestown Hospital Locations, and, as such, is a business that receives public contracts or funding from the Commonwealth or its subdivisions.

WHEREFORE, as a result of the unlawful conduct of the Defendants, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant, and grant her the maximum relief allowed by law, including, but not limited to:

(A) Back wages and front pay in an amount to be determined at trial, but no less than One Hundred and Fifty Thousand Dollars ($150,000.00);

(B) Compensatory damages and lost benefits;

(C) Plaintiff's reasonable attorneys' fees and all costs of this action;

(D) Pre-judgement interest in an appropriate amount;

(E) Such other and further relief as is just and equitable under the circumstances; and

(F) Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth by applicable federal law.

COUNT III
PENNSYLVANIA WHISTLEBLOWER LAW
43 P.S. § 1421, *et seq.*
WRONGFUL TERMINATION

71. Paragraphs 1 through 70 are hereby incorporated by reference as though the same were fully set forth at length herein.

72. Throughout the course of her employment, Plaintiff discovered that Mr. Zeladonis was potentially violating federal and state regulations, as well as relevant ethical standards, through his questionable narcotic dispensing practices.

73. Plaintiff complained to Ms. Costello that this activity was unethical and/or

unlawful.

74. Throughout the course of her employment, Plaintiff also discovered that Mr. Zeladonis's unethical, and potentially illegal, narcotic dispensing practices led to questionable billing practices with customers in federally- and/or state-assisted insurance programs.

75. Plaintiff complained to Ms. Costello that this activity was unethical, unlawful, and/or wasteful.

76. Shortly after her report to Ms. Costello of Mr. Zeladonis's waste and/or wrongdoing, Plaintiff was terminated for clearly pretextual reasons.

77. It is believed and therefore averred that Plaintiff was wrongfully discharged for reporting waste and/or wrongdoing to Defendant and/or based on Defendant's belief that Plaintiff was about to report the same to appropriate authorities.

78. Defendant unlawfully violated the public policy exception to Pennsylvania's common law tradition of at-will employment by unlawfully and retaliatorily terminating Plaintiff's employment because of Plaintiff's knowledge and disclosure of unlawful waste and/or wrongdoing in violation of 43 P.S. § 1423.

79. The actions of Defendant, as stated above, constitute a violation of Pennsylvania public policy entitling Plaintiff to all appropriate damages and remedies available.

WHEREFORE, as a result of the unlawful conduct of Defendant, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant, and grant her the maximum relief allowed by law, including, but not limited to:

(A) Back wages and front pay in an amount to be determined at trial, but no less than One Hundred and Fifty Thousand Dollars ($150,000.00);

(B) Compensatory damages and lost benefits;

(C) Punitive damages for Defendant's retaliatory practices which were committed with malicious and reckless indifference to Plaintiff's rights;

(D) Pre-judgment interest in an appropriate amount;

(E) Such other and further relief as is just and equitable under the circumstances; and

(F) Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth by applicable federal law.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

MURPHY LAW GROUP, LLC

By: ______________________________

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Dated: June 28, 2017

DEMAND TO PRESERVE EVIDENCE

The Defendant is hereby demanded to preserve all physical and electronic information pertaining in any way to Plaintiff's employment, to her potential claims and her claims to damages, to any defenses to same, including, but not limited to, electronic data storage, employment files, files, memos, job descriptions, text messages, e-mails, spreadsheets, images, cache memory, payroll records, paystubs, time records, timesheets, and any other information and/or data which may be relevant to any claim or defense in this litigation.